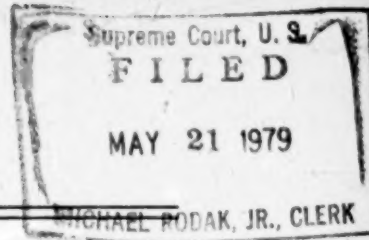


APPENDIX.



**In the
Supreme Court of the United States.**

OCTOBER TERM, 1978.

No. 78-1076.

**STATE OF RHODE ISLAND,
PETITIONER,**

v.

**THOMAS J. INNIS,
RESPONDENT.**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF RHODE ISLAND.**

**Petition for Certiorari filed January 5, 1979.
Certiorari granted February 26, 1979.**

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**STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS**

KENT, SC.

SUPERIOR COURT
No. 75-333-C.A.

STATE OF RHODE ISLAND

vs.

IND. No. 75-8

THOMAS J. INNIS

Chronological List of Relevant Docket Entries.

1975

March

20 Indictment returned.

October

31 Trial begins in the Superior Court for Kent County.

November

3 Trial continues.

4 Trial continues.

5 Trial continues.

6 Trial continues.

7 Trial continues; defendant's oral motion to suppress heard.

10 Trial continues; voir dire on defendant's motion to suppress is concluded; motion to suppress is denied; voir dire on State's motion to allow testimony of Mr. Aubin; motion denied.

1975

November

- 11 Trial continues.
- 12 Trial continues; jury charged and retires to deliberate; jury returns verdict of guilty as charged.
- 13 Motion for new trial filed.
- 25 Motion for new trial denied; defendant sentenced to serve twenty (20) years on Count 1, thirty (30) years on Count 3, and to life imprisonment on Count 5.

December

- 2 Notice of appeal to the Rhode Island Supreme Court filed.
-

**STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS.**

KENT, SC.

SUPERIOR COURT
No. 75-333-C.A.

STATE OF RHODE ISLAND

vs.

IND. No. 75-8

THOMAS J. INNIS

HEARD BEFORE MR. JUSTICE SHEA AND A JURY

31 October 1975
3 November 1975
4 November 1975
5 November 1975
6 November 1975
7 November 1975
10 November 1975
11 November 1975
12 November 1975
25 November 1975

Motion for New Trial and Sentencing.

Appearances:

For the State Walter Stone
For the Defendant Benedetto Cerilli

• • • • •

[15] MR. CERILLI: Your Honor, I'd also make a motion for an individual voir dire of the jury panel based on the fact

that this particular case has received a considerable amount of publicity in the Kent County area, and in addition, Mr. Innis himself has been the subject — or at least his name has been mentioned in an article in the Providence Journal, front page, in just the Summer of '75.

THE COURT: I certainly think that is a reasonable request in view of the offense charged. The defendant's motion for an individual voir dire is granted.

MR. STONE: I have no objection.

MR. CERILLI: Your Honor, I'd also make a motion to sequester the witnesses.

THE COURT: The motion will be granted. Any further motions to be handled today?

MR. CERILLI: Your Honor, there is another motion which we have discussed in chambers but I will put on the record at this point, the motion to suppress the introduction of a sawed-off shotgun, and it is my understanding that that motion will be heard during the course of the trial with a voir dire.

[16] THE COURT: Is there any objection to proceeding in that way?

MR. STONE: No objection on the part of the State.

THE COURT: Do you anticipate that this motion for suppression would be a very extensive one? I am wondering about interrupting the trial proceedings. The fact is that if we took it beforehand, we may well be repeating a great deal of testimony. While normally they are heard before trial, I have no objection to hearing it at the time the situation arises.

MR. STONE: This doesn't involve a confession as such, only the possession related to the whereabouts of the shotgun.

THE COURT: It involves the Fourth Amendment Rights?

MR. STONE: And I don't expect there will be a lot of witnesses on the part of the State.

MR. CERILLI: I don't expect to produce any witnesses, your Honor, at this point.

THE COURT: All right. If there is no objection from either side, we will handle it that way when the situation arises during the trial.

[17] MR. CERILLI: All right. Your Honor, may we approach the bench for a moment?

(Bench conference)

THE COURT: This is an unusual request and I am not sure this Court has any authority to order those authorities who are responsible for Mr. Innis' custody to allow him to make this trip. I am inclined, however, to see if I cannot in some way get their cooperation and allow Mr. Innis and his attorney to — under whatever limitations or conditions the committing squad or the prison authorities make — to examine the area of Chalkstone Avenue in Providence, and see if he can locate this house that Mr. Innis feels may be important to his defense. Now, we have a weekend coming up, and because of so many considerations, the Court will attempt to cooperate, Mr. Innis, but I would tell you that I do not want any prior publicity or notice to the fact that I have agreed with this request. I am doing it because I feel it is important to you. I am not creating a policy for the Court to follow, if you know what I mean. I will speak personally with the committing squad people. I will speak with them as soon as we have concluded, and it would be done at their convenience and under . . .

* * * * *

[65] Q And what in particular, if anything, were you searching for?

A A body.

Q And in fact were you successful in that search?

A Yes, I was.

Q And did you recover a body?

A Yes, I did.

Q And where did you recover the body?

A Approximately traveling south on Weaver Hill Road from Harkney Hill Road, about a mile-and-a-half there is an access road. Approximately 300 yards down the access road and 800 yards into a wooded area, I found a shallow grave.

Q You found a shallow grave? You say a shallow grave. Court you describe what you first observed?

A Well, I'd been in the woods about an hour-and-a-half, two hours, and I came upon an area that had been — the leaves — an area say about ten, fifteen feet — the leaves had been disturbed.

Q The leaves had been disturbed. Now, showing you a photograph that I will ask to be marked as State's Exhibit 1 for Identification at this time.

THE COURT: State's 1 for Identification.

Q Showing you State's Exhibit 1 for Identification, as . . .

.

[86] the body of Mr. Mulvaney?

A Only on the hip area and the lower legs.

Q And would that lead you to conclude if a person had walked through heavy brush they would have had to be clothed?

A Certainly the upper portion of the body and the rest of the body had no abrasions and would therefore, if walking through a wooded area, would most likely be clothed or protected in some manner.

Q Some manner. And what conclusion did you reach based on your medical experience and education as to the cause of death of John Mulvaney?

A It is my opinion that the cause of death is the shotgun wound of the head.

Q Causing severe hemorrhaging?

A Causing extensive fractures and extensive destruction of brain tissue.

Q And do you have an opinion based on your experience and education as to the manner of death?

A Yes, I do.

Q And what is that opinion?

A Homicide.

Q Homicide? Thank you. I have no further questions.

.

[218] Q And what time, if you can recall, did he come on duty?

A He came on duty about 5:30 on a Sunday night.

Q Now, I show you State's Exhibit 16, it is a photograph of a cab, it says Silver Top on the top, it says Public, then 1263. I ask you if you can identify that vehicle?

A I can. It is a 1973 Chevrolet, Cab Number 21.

Q And whose cab is that?

A Belongs to me, sir.

Q And on January 12th, do you know who was driving Cab Number 21?

A John Mulvaney.

Q And did you have an occasion to dispatch that cab to 105-107 Comstock Avenue?

A I did. I dispatched that cab about, I'd say, 10:25 that evening.

Q And in the normal course of events, do you keep a log of the cabs you dispatch?

A We mark down the time that we give them the job.

Q And you say Cab 21 as identified in that photograph is the same cab that Mr. Mulvaney was driving?

A Yes, it is.

.

[266] A Ground hog, maybe.

Q Ground hog, maybe? Now, from your knowledge of what a shotgun normally looks like, would this one be easy to conceal?

A Yes, sir.

MR. STONE: I have no further questions.

MR. CERILLI: I have no further questions of this witness, your Honor, but I would argue again that in our prior discussions at pretrial, it was known the shotgun would be introduced at some time. It was discussed at that time should we have the voir dire or the constitutional issues before trial as normal procedure. We had decided then we'd wait until the introduction. That was my understanding and that's why a formal motion wasn't submitted at that time. Now, the shotgun comes in for identification. Now, once it's in for identification, no cautionary instruction the Court gives, if it is suppressed later on, it's not put in as a full exhibit, it is absolutely useless. Any cautionary instruction at that time would not cure the error. And I maintain again that before any further testimony on this particular shotgun, your Honor, is received by this jury, we should determine whether or not it was obtained in an illegal manner. [267] That's the whole question, not really the identification. How was it obtained? Was it obtained in an illegal manner? If it's obtained in an illegal manner, it should be suppressed.

(Bench conference)

THE COURT: With agreement of counsel, it appears that there are two voir dire hearings that are necessary, one on the admissibility of this State's 41, of which issue has been raised, and also the testimony of the certain witness proffered by the State whom I insist there be a voir dire before. We will interrupt Mr. Calder's testimony at this point. I will explain to the

jury that there are legal considerations that have to be taken care of and we will not waste their time with it. We will take two witnesses who are ready, who have nothing to do with physical evidence, and then excuse the jury for the weekend. This afternoon, we will devote to the voir dire hearing so that when we resume on Monday, we will be able to continue without interruption. Is that understood and agreeable, counsel?

MR. STONE: Yes. And could the Court instruct Mr. Calder that we haven't finished with his testimony, and will return Monday?

* * * * *

[299] appears in all fairness to you that we would be occupied most of the afternoon so for that reason we have interrupted the trial. We will excuse you. You can start your weekend early. The day is not a total loss, however. The Clerk of the Court has a very important paper for you, a small check with your name on it. Today is payday. If you will retire to the juryroom, I will have Mr. Mooty pay you off. Be in the juryroom Monday morning no later than ten minutes of ten. I repeat my instructions to you, have no conversations among yourselves about the case, do not allow anyone to discuss it in your presence, do you understand? Have a good weekend. You are excused.

(The Jury left the courtroom)

THE COURT: We will recess until 2 o'clock. This afternoon we will devote to a voir dire on the seizure of the weapon that has been marked for Identification, and also on Mr. Aubin.

MR. STONE: I am trying to get Mr. Aubin. We have the police coming in at two. It seems to be some problem with

Mr. Aubin. I am trying to make some arrangement to have him picked up. He works somewhere out of state.

[300] MR. GREEN: Massachusetts. General Electric. About a 45 minute ride. He is in a car pool and does not have transportation.

THE COURT: We may have to do this Monday but it would delay him. If you cannot get him this afternoon, we will do it on Monday. I will not allow the man to testify until I have heard a voir dire out of the hearing of the jury.

MR. CERILLI: Your Honor, if the Court please, if I may make a suggestion. If the man is from out of state, and if he is going to come in for a voir dire today, and the voir dire assuming — I don't believe it will be, but assuming that it is granted, Monday he'd have to come back again. I just point that out to the Court. If it is granted, he'd have to testify before the jury.

THE COURT: If he is on his way, let him come. If he is not, we may have to do it first thing Monday morning. But in fairness to the jury, if we knew that, I would not have the jury come in at 10 o'clock.

MR. STONE: I definitely have him scheduled here for Monday. I would say —

THE COURT: Yes do.

[301] MR. CERILLI: I wouldn't mind starting earlier Monday morning.

THE COURT: Be available at 9:30. We may have the voir dire before the jury is seated. Perhaps we could conclude it by then.

MR. CERILLI: I will be here at 9:30.

THE COURT: I still want your memoranda with regard to this.

MR. CERILLI: It should be here by two. Judge, may I approach the bench with Mr. Stone?

THE COURT: Yes.

(Bench conference)

AFTERNOON SESSION

(Defendant enters)

MR. STONE: Your Honor, at this time the State would call Patrolman Lovell to take the stand.

THE COURT: Very well.

MR. CERILLI: If your Honor pleases, I'd ask the other police officer to leave the courtroom if he is going to be a witness.

THE COURT: The witness is to be sequestered. Very well. Incidentally, although the witnesses have been sequestered during the trial, there was no motion [302] on the record for that, as I recall.

MR. CERILLI: I thought there was. I'd make a formal motion at this point.

THE COURT: Well, they have been sequestered, in any event.

ROBERT M. LOVELL SWORN

Direct Examination by Mr. Stone

Q Now, you're a Providence Policeman, Patrolman Lovell?

A Yes.

Q On January 17th, in the A.M., approximately 4:30 A.M., were you on duty?

A Yes, sir.

Q And can you recall what you were doing at that time?

A I was in the Mt. Pleasant area.

Q Why were you in the Mt. Pleasant area?

A I was searching for a subject that was wanted regards to a robbery of a cab driver.

Q Of a cab driver?

MR. CERILLI: Your Honor, I have no objection to that at this time, the only problem I have, your Honor — we can speak freely now with the jury not being here?

[303] THE COURT: Surely.

MR. CERILLI: — is that if this officer were to testify before the jury, I'd like to have some cautionary instruction or we should discuss it now, with the fact of bringing in any evidence as to this second cab robbery. But the way he's testified now, Judge, if he says a cab driver, a robbery of a cab driver, that's what we are on trial for, robbery of a cab driver, not the one from Woonsocket, so I would object, your Honor, for the record.

MR. STONE: Well, I think we have to look in light of the fact Monday morning we have Aubin coming in and I would assume that if his testimony is allowed to come in, then the jury will know about the other cab driver.

THE COURT: Well, that has not been decided.

MR. STONE: I know, your Honor.

MR. CERILLI: But I think perhaps this witness, if he does testify before the jury, should be cautioned that he could indicate that he was in the Mount Pleasant area on detail searching for a suspect.

THE COURT: It is much safer. We do not want to get anything before the jury that we'd be unable to [304] strike from the record effectively.

Q Were you successful in finding someone pursuant to your search?

A Yes, sir.

Q And who did you find?

A Thomas Innis.

Q Thomas Innis? Where did you locate him?

A On Chalkstone Avenue.

Q Do you see that same Thomas Innis in the courtroom today?

A Yes, sir.

Q Could you point to him, please?

A The subject sitting right there.

Q What does he have on?

A Denim jacket, brown pants, denim — brown shirt, excuse me, and denim pants.

MR. STONE: May the record reflect that the witness had indicated the defendant Thomas Innis?

THE COURT: The record may so reflect.

Q Was Mr. Innis placed under arrest?

A Yes, sir.

Q Did you advise him of his constitutional rights to remain silent?

MR. CERILLI: Objection, your Honor.

[305] A Yes, sir.

THE COURT: I beg your pardon?

MR. CERILLI: Objection. Leading.

MR. STONE: Your Honor, I would assume this is preliminary in the absence of the jury.

THE COURT: It is preliminary but I will not allow the leading questions, I warn you, Mr. Stone.

Q You said that you placed him under arrest?

A Yes, sir.

Q Now, what did you do when you placed him under arrest?

A I advised him of his constitutional rights.

Q And what happened next?

A Well, I searched him for weapons.

Q Did you find any weapons?

A No, sir.

Q And was anyone else at the scene at that time?

A At that time, no sir.

Q Did anyone else subsequent to that appear at the scene?

A Well, a short time later several policemen responded to the scene.

Q And do you know who any of them were?

A Sergeant Sears, Captain Leyden.

Q Now, was he advised of his rights again in your presence?

[306] A Yes, sir.

Q By whom?

A By Sergeant Sears.

Q By Sergeant Sears. And then what happened?

A Well, Captain Leyden arrived and he also advised him of his rights.

Q Still on Chalkstone Avenue?

A Yes, sir.

Q What happened then?

A Well, then we placed him in a caged car and had him transported to the station.

Q And what happened next?

A Well, the patrolman in the wagon came back on the air and they said that Thomas stated he had wanted to show them where the gun was, so they in turn brought him back to where we were.

Q Brought him back to you?

A Yes, sir.

Q What happened then?

A We went up in the area where Thomas showed us — he pointed out a certain spot under some rocks. He said the gun was there.

Q Was there any conversation with him?

[307] A At the time?

Q Yes.

A Well, he's just showing us where the gun was. He's looking through some rocks. He said: "I think I put it here."

Then, you know, it wasn't there. Then he went to another spot and then we found the gun.

Q And did he say why he wanted to show you where the gun was?

A Yes, sir. He said that he didn't want no kids up there to get hurt because it was right next to the Pleasant View School. It's a school for retarded.

Q And did you, subsequent to the return to the area, find a shotgun?

A Yes, sir.

Q And did you recover the shotgun?

A I did, yes.

Q Did you identify it?

A Yes.

Q How did you identify it?

A I marked it. I marked my initials on the gun.

Q Can you describe what that shotgun looked like?

A It's a bolt action .16 gauge shotgun, sawed-off.

Q Sawed-off? Showing you State's Exhibit 41 for [308] Identification, can you identify this shotgun?

A Yes, sir.

Q And how can you identify it?

A My initials are scratched here along with the date.

Q What are the initials on it?

A RML.

Q And what is your name?

A Robert Michael Lovell.

Q Lovell. What's the date that appears on it?

A 1/17/75.

Q And is it your testimony that you advised Mr. Innis of his rights?

A Yes, sir.

Q And that he voluntarily directed you to this shotgun?

A Yes, sir.

MR. STONE: I have no further questions.

Cross-Examination by Mr. Cerilli

Q Where did you apprehend Mr. Innis?

A On Chalkstone Avenue, in front of 1630, I believe, Chalkstone Avenue.

Q What was he doing?

A What was he doing?

Q Yes.

[309] A Standing in the street.

Q In the street?

A Well, you know, right near the curb.

Q From which direction did you approach, from Providence or from Centerdale or Manton section?

A Johnston. I approached from the Providence side coming down the hill.

Q All right. You were coming down the hill. What side of the street was Mr. Innis on?

A The left side.

Q The opposite side of the street from where your car was?

A Yes, sir.

Q And he was standing on the street facing what direction?

A Towards the street.

Q Facing towards you?

A Yes, sir. That's why I saw him and stopped.

Q Did you stop the car?

A Yes.

Q As soon as you saw him?

A Yes (Nodding).

Q And he stood right there, did he not?

A Yes, sir.

[310] Q He walked right towards the car, did he not?

A I believe he did, sir.

Q He didn't run away at all?

A No, sir.

Q There was no fight at all?

A Not at that time.

MR. STONE: Objection.

THE COURT: Overruled. It is cross-examination, Mr. Stone. You will not be able to use that particular word in front of the jury tomorrow. That is a conclusion they will deliberate on. You may ask the question more carefully, though.

MR. CERILLI: Yes, your Honor.

THE COURT: I would observe that as this trial is going on, the precision with which questions have been asked and the respect for the regulations has lessened somewhat.

Q Now, what did he do when you stopped your car?

A Just stood still, sir.

Q And did you take him into custody?

A Yes, sir.

Q You handcuffed him?

A Yes, sir.

[311] Q Now, after you handcuffed him, what did you do?

A I advised him of his constitutional rights as I was handcuffing him, then I put him in the back seat of the car.

Q So, you advised him of his constitutional rights outside of the car?

A Yes, sir.

Q What did you say to him, exact words?

A Nothing really other than advise him of his constitutional rights and —

Q What were the words that you spoke to him?

A Oh, you mean his constitutional rights?

Q Yes.

A You have the right to remain silent; you have the right — you have the right to remain silent; anything you say can and will be used against you in a court of law; you have the right to have an attorney present when being questioned.

Q Is that all you said?

A Basically, that's it, yes, sir.

THE COURT: Did you recite them or did you read them from a card?

WITNESS: I recited them, Like I say, this [312] all happened very fast.

Q And is that the entire — is that all you said to him, to Thomas Innis, at that time?

A Yeah. Well, he — when I sat him down in the car, he asked me for a cigarette and I gave him one.

Q Is that the only thing he said to you?

A At that time, yes.

Q Now —

A Because right — well —

Q Pardon?

A No. I was going to say right then the sergeant arrived.

Q I understand. Now, this was all in front of 1630 Chalkstone Avenue?

A Right across the street, or right in front.

Q How long a period of time transpired before someone else arrived on the scene?

A Matter of a couple of minutes, if that.

Q All right. Who was the next person on the scene?

A Sergeant Sears.

Q And what did he do?

A He sat down in the back seat with Thomas and he advised him of his constitutional rights.

Q What did you hear him say?

[313] A Basically, what I said, you know.

Q Did he add anything other than what you had just said?

A I don't remember, sir.

Q You don't remember?

A No.

Q All right. Then what happened? What happened next?

A Well, the captain came up, captain pulled up right then and there, and he came in, also.

Q Are you referring to Captain Leyden?

A Right, Captain Leyden.

Q What did he do?

A He advised Thomas of his constitutional rights.

Q Where did he advise him of his constitutional rights?

A Still sitting in the back seat of the car.

Q Where was Captain Leyden sitting?

A He came to the other door, the rear door.

Q You said the other door. Which door are you speaking?

A Rear door on the right side.

Q Did he speak through the window?

A No, he opened the door.

Q Did he get in the car?

A I don't remember if he got in the car.

Q Where was Sergeant Sears at this time?

[314] A Still seated in the back seat with Thomas.

Q You don't remember whether or not Captain Leyden got in the car?

A No, sir, I don't remember. I know he was standing at the door. I don't know if he sat down or not.

Q Did Sergeant Sears use anything to assist him in informing Mr. Innis of his constitutional rights?

A You mean as if he read it off a card?

Q Yes.

A I don't believe so, sir.

Q All right. What did Captain Leyden say to Thomas Innis?

A He advised him of his constitutional rights and then he —

Q Could you be more specific what he actually said? Did he —

A Well, his exact words I don't know, sir. I mean, I don't remember.

Q How long a period of time did that take? Did it — strike that. How long a period of time did Sergeant Sears talk with Mr. Innis?

A I don't know. It's not even a minute, I would say.

Q Less than a minute?

A Not even, sir. That all transpired very fast.

[315] Q Okay. How long a period of time was it between the time that Sergeant Sears concluded or finished giving Mr. Innis his constitutional rights until the time that Captain Leyden began giving Mr. Innis his constitutional rights? How long a period of time transpired between those two things?

A Timewise, I wouldn't know. It was a very short time.

Q Very short?

A Very short time.

Q Happened almost one right after the other?

A Yes, sir.

Q Now, Captain Leyden didn't use anything to assist him in giving him his constitutional rights?

A I don't remember, sir.

Q Was the light on in the car?

A Yes, sir, because the door was open.

Q All right. The door was open?

A Yes, sir.

Q Which door was open?

A Well, the front one and the rear one.

Q And did you observe anything in Captain Leyden's hand?

A No, I don't remember seeing anything.

Q Now, after Captain Leyden concluded speaking to [316] Mr. Innis, what happened?

A Well, we had called for a wagon and we had took him out of the rear seat of my car and placed him into the caged car when they arrived.

Q Who placed him in the caged car?

A I believe it was — I believe it was a sergeant.

Q Sergeant Sears?

A And the men from the wagon.

Q All right. Now, during the period of time that Thomas Innis was in your vehicle, during that period of time, sir, that Sergeant Sears and Captain Leyden spoke to Mr. Innis, did he say anything besides: "I want a cigarette"?

A I don't remember if he said anything or not.

Q You don't remember him saying anything?

A No, sir.

Q Did you have him sign any waiver form?

A At the time?

Q Yes.

A No, sir.

Q Did you have a waiver form with you?

A No, sir.

Q Now, after the wagon left with Mr. Innis in it, what [317] did you do?

A We were just sitting there.

Q Sitting?

A We were still in the street, I mean. They just started driving up the hill.

Q All right.

A And they weren't gone, I don't know how long, very short time.

Q Could you give us —

A Oh, minute to a minute-and-a-half, if that. As far as timewise, I don't know. They didn't get too far away, I don't imagine, because they were right back within a very short time.

THE COURT: Did they get out of sight, Officer?

WITNESS: Yeah. Well, there's a sharp hill right there, Chalkstone Avenue. They went up around the hill.

THE COURT: Is this anywhere near the area of Roger Williams —

WITNESS: No, sir. This is farther up, near Triggs Golf Course. On the other side of Triggs Golf Course, on the downside of the hill, the corners.

[318] Q So, within less than two minutes?

A Less than two minutes.

Q Less than two minutes the wagon came back?

A Yes, sir.

Q And at that time, what did you do?

A Well, he came up — the captain, the sergeant, myself, came up to the wagon.

Q Together the three of you were there?

A Yes, sir.

Q And what happened then?

A Well, the men in the wagon told us that Thomas had told them that he had wanted to show them where the gun was because he didn't want anybody — any kids up there to get hurt because of the school up there.

Q Did someone say that in front of the other two men?

A Sir?

Q Was that said in front of the other two men, Sergeant Sears and Captain Leyden, too?

A Yeah, I believe they were standing right there. They came up and told the captain this. Sergeant Sears and myself were standing there.

Q Now, as a result of that conversation, what did you do?

A Well, we followed Thomas Innis' instructions as to [319] where he left the shotgun, and we went up to this area.

Q He actually led you to that location?

A Yes, sir, because then we drove just so far in a car, then he said it was right along the street here, so we got out of the car and walked.

Q Whose car was he riding in?

A He was still in the wagon.

Q He was in the wagon?

A Yes, sir.

Q Where were you?

A I was right behind the wagon in my car because we went up — well, right around the corner is Obadiah Brown Road. This is where the gun was.

Q Who was in the wagon with Mr. Innis?

A Patrolmen Williams and McKenna, I believe. Yeah.

Q You were following behind?

A Yes, sir.

Q And who was in the car with you?

A At that time, I was alone.

Q Where was Sergeant Sears?

A In his car.

Q Where was Captain Leyden?

A In his car. We were all like a parade going up the hill.

[320] Q There were four cars going up the hill?

A Yes, sir.

Q And did the wagon stop at just one location or what happened?

A He stopped and then Thomas got out, you know. They took Thomas out of the wagon and he walked along the street to show us where the gun was.

Q Did you talk to Thomas again before he began to take you to this location on Obadiah Road or Obadiah Brown Road?

A Repeat?

Q Did you talk to Thomas again while he was in the wagon?

A While he was in the wagon, no, sir. Outside of the wagon.

Q Did Captain Leyden talk to him while he was in the wagon?

A Yeah. When he came up, you know, when the wagon first came back to us, you know, he asked Thomas: "You want to show us where it was," and he said yes.

Q You were there?

A I mean, I couldn't really hear what was being said.

Q So you don't know that?

A The captain had his head inside the car. I really —

Q You don't know. I think —

[321] MR. STONE: Mr. Cerilli is stuck with the answer. He asked the question.

MR. CERILLI: He can explain it.

MR. STONE: He never asked him of his own personal knowledge.

MR. CERILLI: It is quite obvious, your Honor, that he realizes now that he never heard the word. He is just assuming.

MR. STONE: Your Honor —

MR. CERILLI: I will withdraw the question and ask another question.

THE COURT: All right.

MR. CERILLI: Withdraw that question.

Q Did you hear Captain Leyden speak with Thomas Innis in the wagon the second time?

A The second time, no.

Q You don't know what the conversation was?

A No, sir.

Q Okay. And you didn't speak with Thomas Innis?

A No.

Q And Sergeant Sears speak with Thomas Innis?

A I don't remember.

Q You don't remember?

[322] A No.

Q Now, when Thomas Innis got out of the wagon, did you speak with Thomas Innis again?

A Yeah. We were walking side by side along Obadiah Brown Road.

Q Did you inform him of any constitutional rights at that point?

A No, sir.

MR. CERILLI: I have no further questions.

MR. STONE: I have no further questions.

MR. CERILLI: Your Honor, before this officer steps down, may I have a moment, please?

THE COURT: Yes.

MR. CERILLI: I have a few more questions.

Q Just a couple of questions, Officer. While Thomas Innis was in the car with you, did he ask you if you were the same police officer that patrolled that area 20 or 25 minutes ago?

A I don't remember that being asked, no.

Q Did he tell you that he was watching Chalkstone Avenue from a group of pine trees?

A At the scene there?

Q Yes.

[323] A I don't remember that ever being said.

Q Did he ever mention anything about a pine tree, being in a grove of pine trees, or in that area watching?

A Not that I remember at all, sir.

Q So the only conversation you had with him was relative to him asking you for a cigarette?

A Yes, sir.

Q And you telling him —

A "Sure, I'll give you one", and I just gave him one, you know.

Q You gave him a cigarette?

A Yes. That's it.

Q And the only thing that you told him was the constitutional rights as you have testified to earlier this afternoon?

A Yeah.

Q Isn't that true?

A Yes, sir.

MR. CERILLI: I have no further questions, your Honor.

Redirect Examination by Mr. Stone

Q Now, Patrolman Lovell, you say you advised him of his constitutional rights, and I think Mr. Cerilli asked [324] you is that all you said, and your answer was "basically".

A Yeah.

Q I mean, you know, I could have said, you know, like when he asked me: "Can I have a cigarette", "sure, Tom, I'll give you a cigarette", you know. This kind of conversation.

Q My specific question is, could you have said more with reference to his constitutional rights?

MR. CERILLI: Objection, your Honor.

THE COURT: Overruled. You may answer.

A Yeah, I could have. I mean, you know —

Q Well, do you recall exactly what you said?

A You mean as far as his constitutional rights?

Q Yes.

A Yeah. Well, it's basically what I just said, I mean, you know, what I had said earlier, basically, I mean.

Q What do you mean when you say basically?

MR. CERILLI: Your Honor, objection. He's answered the question.

THE COURT: Overruled.

Q Do you understand my question?

A Yeah. You want me, you know, did I add more into the constitutional rights.

[325] Q I just want to know what you mean when you say basically?

A I mean I may not have used the exact words that I used now.

Q Well, can you recall what exact words you did use?

A Just, you have the right to remain silent; anything you say can and will be used against you in a court of law; you got a right to have an attorney while being questioned, and if you can't afford an attorney, one will be appointed by the court.

Q Is that everything that was —

A That's basically what I said.

Q Okay.

A I mean, you know, adding in small words, and, is, you know.

Q But, Officer Lovell, do you understand the difference in what you just said and what you said earlier? You did say more this time didn't you? You understand the difference?

A I didn't realize I said more this time. I mean, you know —

MR. STONE: No further questions.

THE COURT: Thank you, Officer. You may step down.

FRANCIS J. SEARS SWORN

Direct Examination by Mr. Stone

Q Sergeant Sears, can I assume from the uniform that you're wearing that you are employed by the Providence Police Department?

A That's correct.

Q And what capacity?

A I'm a sergeant with the Providence Police Department, Patrol Division.

Q Patrol Division? Were you on duty on the night of — or early morning hours of January 17, 1975?

A I was.

Q And can you recall specifically what area you were in at approximately 4:30 A.M.?

A Yes. I was in the Rhode Island College, Obadiah Brown Field area, in the City of Providence.

Q What caused you to be in that area at that particular time?

A At that particular time, I was on a search with patrolman Lovell for a suspect in that particular area who was known to us as Thomas Innis.

Q Do you see that same Thomas Innis in this courtroom today?

[327] A Yes, I do.

Q Could you point to him, please?

A The gentleman sitting right there.

Q And was your search for Thomas Innis successful?

A Yes, it was.

Q And you apprehended him that night?

A Patrolman Lovell apprehended him that night, correct.

Q And did you arrive in the area where Patrolman Lovell had apprehended him?

A I did.

Q Do you have a — did you have a chance to observe Thomas Innis?

A I did.

Q Is that the same Thomas Innis you see in the courtroom today?

A It is.

Q Okay.

MR. STONE: May the record so indicate?

THE COURT: The record may so indicate.

Q What happened once you arrived in the area where Mr. Innis was?

A When I arrived at that area, Mr. Innis was already in custody by Patrolman Lovell. I asked Patrolman Lovell [328] if he had notified Innis of his constitutional rights, and he said he had. At this time, I notified him of his constitutional rights.

Q And specifically what rights did you notify him of?

A I notified him of the rights that he had to remain silent; the right to an attorney; and he didn't have to say anything at that time, and also that he, because of the procedures that were taking place, he knew he was going to go to Central Station to be transported at that time.

Q And what happened next?

A Shortly thereafter, Captain Leyden responded from the Providence Police and also a wagon was asked for to transport Mr. Innis to Central Station.

Q Did you say Captain Leyden appeared?

A Yes, he did.

Q And what happened when Captain Leyden appeared?

A When Captain Leyden appeared, he notified him of his constitutional rights.

Q In your presence?

A Yes, he did.

Q What happened subsequent to that?

A Shortly thereafter, he was transported to Central [329] Station and on the way to Central Station he explained or exclaimed to the police officers that the gun that he had had was placed in the woods at Obadiah Brown Field, and he wanted to show them where it was because he was afraid there were children or somebody in the area the next day who would injure themselves.

MR. CERILLI: Objection. Motion to strike, your Honor.

THE COURT: Well, it is a little late.

MR. CERILLI: I waited until he completed it.

THE COURT: I will grant the motion to strike. It is hearsay.

Q Well, did he return to where you were?

A Yes, he did.

Q And what happened when he returned?

A When he returned at this time, he went alongside of the road, Obadiah Brown Road, and he searched up and down the road for a short period of time, then he found a shotgun.

Q He was doing the searching?

A He was with the police.

Q And you were just close by observing?

A Correct.

[330] Q Now, this conversation that you said that Innis had related to persons in the wagon, was there a call back over the radio?

A Yes, there was.

Q And what did the call say?

A The police officer at that time stated to us that he was returning to Obadiah Brown Road with the subject who stated at that time he wished to show us where the gun was.

MR. STONE: I have no further questions.

Cross-Examination by Mr. Cerilli

Q Where were you — strike that. Sergeant Sears, where was Mr. Innis when you informed him of his constitutional rights?

A He was sitting in the police car, Patrolman Lovell's police car, when I arrived.

Q Front seat or back seat?

A He was in the — if I recall correctly, he was in the back seat.

Q And where were you?

A I was in the back seat.

Q And did you use anything to assist you in informing him of his constitutional rights?

[331] A At that time, no.

Q When did Captain Leyden inform him of his constitutional rights?

A Shortly thereafter. A few minutes.

Q And what did Captain Leyden state to Mr. Innis when he informed him of his constitutional rights, if you can recall?

A He informed him he had a right to an attorney; he didn't have to say anything, he could remain silent; that he was a subject that they were looking for, and that he was going to be transported to Central Station.

Q Is that it?

A If I recall correctly, yes.

MR. CERILLI: I have no further questions of this witness, your Honor.

Redirect Examination by Mr. Stone

Q You say to the best of your recollection that's what Captain Leyden said?

A Yes.

Q In your presence?

A Yes.

Q Now, can you recall whether or not he indicated that if Mr. Innis could not afford an attorney one would be [332] appointed?

MR. CERILLI: Objection, your Honor.

THE COURT: Sustained.

MR. STONE: Your Honor, I'm just attempting to refresh his memory. I asked if he recalled that.

THE COURT: It seems to me you will have to get the captain in. You are asking these people to state something for the truth of this statement. It seems to me it is rank hearsay, regardless of who asks for it.

MR. STONE: Well, I couldn't agree more but Mr. Cerilli asked him on cross-examination.

THE COURT: I thought you would object. You did not.

MR. STONE: Well, I have no reason to object. I wanted to hear what he was going to say. I'm asking now based on his answer, could he recall that being said.

THE COURT: Sergeant Sears, think a moment, think very carefully and see if you can recall exactly what was conveyed to the defendant, Mr. Innis, as to his constitutional rights, both at the time you gave them to him and at the time Captain Leyden gave them to him.

[333] MR. CERILLI: I will object to the Court asking this witness that question.

THE COURT: Your objection is overruled. Your exception is noted.

A What I recall is, your Honor, is that when Captain Leyden responded, he asked me in the presence of Patrolman Lovell if we had notified him of his constitutional rights. At this time we said yes. He then again proceeded to notify him of his constitutional rights. If I can remember correctly, he notified him that he had the right to an attorney; the right to remain silent; anything that he said could be used against him. This is about all I recall at that particular time.

Q Now, with reference to what you said to Mr. Innis, can you recall specifically what you said?

A Just that he —

MR. CERILLI: Objection, your Honor. This has already been gone over a number of times.

THE COURT: Overruled. You may answer.

A I remember when I entered the police car, I asked Patrolman Lovell if he had notified him of his constitutional rights. He said yes. We then proceeded [334] to notify him of his constitutional rights, the right to remain silent; the right to an attorney; he didn't have to say anything at this particular time, and that was it at this particular time that I remember myself.

Q What specifically did you say with reference to a right to an attorney?

MR. CERILLI: Objection, your Honor. He already indicated what he said.

THE COURT: Overruled.

A I don't recall. I don't recall anything further as far as the statement I made.

MR. STONE: I have no further questions.

MR. CERILLI: I have no further questions of this witness.

THE COURT: You may step down, Sergeant.

MR. STONE: Your Honor, could we take a brief recess? I don't know if Captain Leyden is outside or not. I know there were only two to begin with.

THE COURT: All right.

(Recess)

[335] (Defendant enters)

THE COURT: Call your next witness, Mr. Stone.

MR. STONE: Captain Leyden.

JOHN J. LEYDEN SWORN

Direct Examination by Mr. Stone

Q Captain Leyden, by whom are you employed?

A Providence Police Department.

Q How long have you been so employed?

A Twenty years.

Q And were you on duty on January 17, 1975?

A Yes, sir, I was.

Q And were you in the area of Rhode Island College anytime during that duty shift?

A Yes, sir I was.

Q More specifically, were you in that area approximately 4:30 a.m.

A Yes, sir, I was.

Q And why were you in that area?

A I was in the South Hill, Mount Pleasant area. I received a call on the air that they had made an apprehension of the defendant Thomas Innis. As a result of that call, I responded to Triggs Memorial and [336] Obadiah Brown area.

Q And did you see Thomas Innis?

A Yes, sir, I did.

Q Do you see him in the courtroom today?

A Yes, sir, I do.

Q Could you point to him, please?

A This man sitting beside counsel table.

MR. STONE: May the record indicate that the witness has identified Mr. Innis?

THE COURT: The record may so indicate.

Q That's the same Thomas Innis you saw on the morning of January 17, 1975?

A Yes, sir.

Q And did you have any conversation with Mr. Innis, sir

A Yes, sir, I did.

Q — when you saw him?

A Yes.

Q What was that conversation?

A On my arrival, I advised the defendant of his constitutional rights.

Q More specifically, what did you say?

A I notified him of his right to remain silent; that anything he said could be held in a court of law [337] against him; that he had the right to an attorney; if he couldn't afford an attorney one would be provided for him by the State of Rhode Island. I then asked him if he understood his constitutional rights, and he said he did.

Q And then what else did he say, if anything at all?

A He said he wanted an attorney.

Q Said he wanted an attorney? And what happened subsequent to that?

A At that point, I directed him to a caged wagon to be transported to the Central Station.

Q And did anything else happen?

A I was getting ready to wrap it up at the scene and I received a call from the dispatcher that the wagon that was transporting the defendant wanted to go back, that the subject wanted to show us where the gun was.

Q Did the wagon return?

A Yes, sir, it did.

Q What happened when the wagon returned?

A Thomas Innis, the defendant, was taken out of the wagon. I again advised him of his constitutional rights.

Q What did you advise him at that time?

A His right to remain silent; that anything he said [338] could be held in a court of law against him; he had the right to an attorney, one would be provided for him by the State of Rhode Island, did he understand those rights.

Q And what did he say then?

A He said he did and he wanted to show us where the gun was.

Q Did he say why he wanted to show you where the gun was?

A Because of the school that was in the area, there was going to be small kids around.

Q And in fact, did he show you where the gun was?

A Yes, he did.

MR. STONE: I have no further questions.

Cross-Examination by Mr. Cerilli

Q Officer, where was Mr. Innis when you first saw him on that day of January 17, 1975?

A Okay. He was on — going down past Triggs Memorial Golf Course, there is one intersection going into Obadiah Brown, or the Pleasant View School. That's on your right-hand side going towards Manton. There is another intersection, a small intersection, that goes into a small playground area. He was standing on the sidewalk with several policemen.

Q All right. Who was he standing with?

[339] A Patrolman Robert Lovell — it had to be almost the entire S.D., Subdistrict men from the north end area.

Q How many police officers would that be?

A On that particular night out, I would say probably about a dozen.

Q Twelve police officers?

A In all. I would say so.

Q And they were all surrounding Mr. Innis?

A No, they weren't all. They were in the general area. There were probably three or four surrounding the defendant.

Q And as you approached him, was he handcuffed?

A Yes, sir, he was.

Q What was the first thing you said as you approached him?

A I advised him of his constitutional rights.

Q Is that the first thing you said?

A That's right.

Q You certain?

A Yes, sir.

Q You talk to anyone else?

A Did I? Did he talk?

Q Did you talk to anyone else?

A At the scene, I might have talked to the policemen, to [340] direct them, after I notified him of his rights, just to give orders, that's all.

Q Did you use anything to assist you in informing Mr. Innis of his constitutional rights?

A No, sir, I did not.

Q Was it by memory?

A Yes, sir.

Q All right. And this occurred right on the street?

A Yes, sir.

Q And what was the next thing that you did?

A After advising him of his rights, I ordered him taken in the caged wagon to the Central Station.

Q And was he placed in the caged wagon?

A Yes, sir, he was.

Q Did you talk to him after you advised him of his constitutional rights and after he told you that he wanted an attorney?

A No, sir, I did not.

Q You did not? Now, how long a period of time did this whole transaction take place?

A Couple of minutes.

Q Couple of minutes. Did he sign a waiver form?

A No, sir, not at that point.

[341] Q Did Mr. Innis leave the scene?

A Yes, sir.

Q And he left the scene in the wagon, I imagine, caged?

A Caged police car, yes.

Q Okay. How long was that caged vehicle gone before it returned to the scene?

A Couple more minutes.

Q And where were you —

A I hadn't left the scene at that point.

Q Where were you?

A I was right directly right at about the playground area off Chalkstone Avenue at Obadiah Brown or the Triggs complex.

Q When Mr. Innis returned to the scene, in the caged vehicle, where did you talk with him?

A I had him taken out of the caged vehicle, right at the entrance. Now we're moving up maybe a couple of feet from the prior location where he was apprehended.

Q You know who took him out of the caged vehicle?

A It would be the men assigned to the wagon that night. Let's see, Patrolman Joseph Gleckman, Patrolman Walter

Williams, and at the — when he was ordered down in the wagon, I put a third policeman on the other side of him in [342] the back of the car.

Q And where did you put him when you took him out of the caged vehicle? Where was he placed? Was he left on the street, put in the vehicle, if you know?

A I — when I took him out of the vehicle the second time, put him back after he told me about where he was going to show us where the gun was — excuse me, I put him back in the wagon to be transported down to Obadiah Brown across from Pleasant View School.

Q So, I understand this correctly, he was taken out of the caged vehicle and you spoke with him where?

A Right on the street.

Q Okay. Who was present?

A It would be — let's see, Sergeant Sears, Patrolman Lovell, Patrolman Gleckman, Patrolman Williams and Patrolman Richard McKenna.

Q Were these officers present when you informed him of his constitutional rights the second time?

A Yes, sir, they were.

Q And was he informed of his constitutional rights the second time on the street at that location?

A Yes, sir.

Q And what was his response after informing you of his [343] constitutional rights the second time

A He wanted to get the gun out of the way because of the kids in the area in the school.

Q Now, after he was placed in the vehicle, after he was placed in the caged vehicle, again, did you follow in that vehicle or did you get in that vehicle? How did you — how were you led to the gun?

A Okay. I had him proceed down Obadiah Brown Road. I had my police car. I summoned some more police cars to the

scene for the use of their headlights, then lined the police cars up on the Pleasant View side of the street so that I could have an unobstructed view, or good view, of where we were searching for the weapon.

Q Were you in the caged vehicle?

A No, sir.

MR. CERILLI: I have no further questions of this witness.

MR. STONE: I have nothing further. I will have the two patrolmen in the vehicle Monday morning, your Honor, if that is necessary.

THE COURT: Do you intend to present any witnesses of your own, Mr. Cerilli, in regard to this voir dire, this particular portion of the case?

[344] MR. CERILLI: No, your Honor. However, based on some of the information that Captain Leyden has supplied, he's put a different twist on this, and there are a number of cases — I had a similar situation before — I don't have those cases with me and I like the opportunity to supply the Court with those. I wasn't prepared to argue on that. I prepared a different argument. I was preparing a different argument based on the other two officers. Now there's been a little change, so I don't know.

THE COURT: Yes, there has been a change.

MR. CERILLI: I don't know if I'd be prepared to argue right now on that. I do have the memo on the other.

THE COURT: I would like that. I will use it over the weekend.

MR. CERILLI: For the record, I have given counsel for the State, Mr. Stone, a copy of this.

THE COURT: With regard to the Aubin testimony?

MR. CERILLI: That's the answer in regards to the admission of the second cab driver, Mr. Aubin.

THE COURT: All right. I will review that over the weekend. We will resume at 9:30 Monday morning. [345] I want

to start this voir dire, complete it, not only on this point but on the Aubin testimony, so that we can resume the trial, depending on my rulings, as early as possible in the morning. I will see counsel in chambers briefly.

(Conference in chambers)

(Court adjourned)

[346] 10 NOVEMBER 1975 — MORNING SESSION

(Defendant enters)

THE COURT: Good Morning, Gentlemen. Let the record reflect the jury is not present.

JOSEPH GLECKMAN, SWORN

Direct Examination by Mr. Stone

Q Is it Patrolman Gleckman?

A Yes, it is.

Q By whom are you employed?

A Providence Police Department.

Q How long have you been so employed?

A Two years.

Q And were you on duty on the A.M. of January 17, 1975?

A Yes, I was.

Q Do you have an occasion to respond to the area of Obadiah Hill, Chalkstone Avenue, Rhode Island College, that general area?

A Yes, I did.

Q Approximately what time?

A Approximately 4:32.

Q And what was the purpose of your responding to that area?

A Patrolman Lovell of the Providence Police Department [347] had apprehended a subject wanted in assault and robbery.

Q And did say you did respond to that area?

A Yes, I did.

Q What happened when you responded to that area?

A At this particular point when I responded, Patrolman Lovell was there with Captain Leyden, I just pulled up, parked my car and went over to the scene. At this point, Captain Leyden, our superior, was administering the rights to a subject who was wanted at that point.

Q And do you see that subject in the courtroom today?

A Yes, I do.

Q Could you point to him, please?

A The subject right here.

Q Could you indicate what he has on?

A He's got a dungaree jacket, a brown and tan print shirt.

MR. STONE: May the record indicate that the witness has pointed to the defendant Thomas Innis?

THE COURT: The record may so indicate.

Q You say you heard Captain Leyden advise this suspect of his rights?

A Right.

Q What did you hear Captain Leyden say?

A He had stated to him he has the right to remain silent, [349] anything he says can and will be used against him in a court of law; he has the right to an attorney while being questioned, and if he can't afford an attorney, the State will appoint him one. At this point, he said, "Do you understand these rights", and he says: "Yes", and, "I'd like to have an attorney."

Q And then what happened?

A At this point, the captain stated: "Take him down in the wagon and keep him in the front office until I get there."

Q Okay. And did you proceed to take him down in the wagon?

A Yes, I did. See, here was the case, I was in Car 27 and there was two other subjects and two other patrolmen in the wagon. Now, he said: "One of the guys in the wagon go in the back make sure everything is all right, and I'll ride in the front." Now, at this time, we proceeded down Chalkstone Avenue.

Q Wait a minute, we're still standing there. Did you get in the wagon?

A Yes, I did get in the wagon.

Q You didn't get back in Car 27?

A No, I didn't. I parked my car there. Now, we all got in the wagon and proceeded down Chalkstone Avenue towards Manton Avenue.

[350] Q Where were you in the wagon?

A I was in the front?

Q Who else was in the wagon?

A Patrolmen —

Q Where was Patrolman McKenna?

A Driving.

Q Was anyone else in the wagon?

A Patrolman Williams was in the back seat with the subject.

Q Patrolman McKenna was driving?

A Right.

Q You also were in the front?

A Yes.

Q What happened then?

A At this point, I was talking back and forth with Patrolman McKenna stating that I frequent this area while on patrol

and there's a lot of handicapped children running around in this area, and God forbid one of them might find a weapon with shells and they might hurt themselves.

Q Who were you talking to?

A Patrolman McKenna.

Q Did you say anything to the suspect Innis?

A No, I didn't.

[351] Q Did he say anything to you prior to this?

A At this point he stated "stop".

Q No. My question, prior to your saying that, had the defendant said anything?

A No.

Q Had anybody said anything to him?

A No.

Q And you were talking to Patrolman McKenna?

A Right.

Q And what happened next?

A At that point, as I was saying, there is kids running around there, as it is a handicapped school, and he says, you know, back and forth with Patrolman McKenna, he at this point said: "Stop, turn around, I'll show you where it is." At this point, Patrolman McKenna got on the mike and told the captain: "We're returning to the scene of the crime, or where the weapon might be, and the subject is going to show us where it will be."

Q Did you return to the scene?

A Yes, we did.

Q What happened when you returned to the scene?

A At this point we was met by Captain Leyden who administered his rights again.

[352] Q What did he say?

A He says he has the right to remain silent; anything he says can and will be used against him in a court of law; he has the right to an attorney while being questioned, and if he can't

afford an attorney the State will appoint him one, do you understand. And he says yes. And at that point, he says he'll show us, and we proceeded to a few spots, where it wasn't. He said it's in the general area. At this point we proceeded down the road a little ways and there was the shotgun under certain couple rocks and just above was the shells.

MR. STONE: I have no further questions.

Cross-Examination by Mr. Cerilli

Q Now, Officer Gleckman, which way did this vehicle proceed —

A We proceeded —

Q — when it left the scene?

A After we all entered the wagon, we proceeded down Chalkstone Avenue towards Manton Avenue.

Q How far had you gone down Chalkstone Avenue before you turned around?

A Well, we proceeded down Chalkstone Avenue. At the intersection of Manton and Chalkstone, we turned heading going towards up Manton Avenue back towards [353] our city, about I approximately say a mile, you know. We started to turn around.

Q A mile down Manton Avenue?

A No. Well, the whole distance between Chalkstone and Manton was approximately a mile.

Q And during this time, the only conversation you had was with Patrolman McKenna?

A That's correct.

Q And that conversation was what?

A Well —

Q The entire substance of the conversation.

A Well, I was talking back and forth about children in the area, this handicapped school, this Moses Brown or Obadiah Brown School up there, and there is retarded children running around up there, and they play in this area on their breaks, and you know, back and forth, and at this point the subject stated: "Turn around, I'll show you where the weapon is."

Q And this conversation, did you mention — did you speak to Mr. Innis at all during this period of time?

A No. I was talking back and forth. I was in the front. I talked back and forth to McKenna.

THE COURT: Could you tell me whether or not [354] this vehicle you were riding in had a separate cab for the driver and where you were seated?

WITNESS: Yes, it is a caged car, your Honor.

THE COURT: Caged car?

WITNESS: It is a screen.

THE COURT: So that you can be overheard?

THE WITNESS: Absolutely. It is like, your Honor, you know, a screen, and there's little spaces, you know, just in case there was only one guy in the wagon he could still transport a subject in the back.

Q Now, you heard the defendant ask for an attorney, did you not?

A Yes, I did.

Q Did he indicate exactly who the attorney would be?

A No, he didn't. I didn't hear that if at all he said that.

Q Did the captain inform you that all questioning should cease of this defendant?

A Yes, he did.

Q Did the captain tell you not to intimidate or coerce him in any way?

A Absolutely. Just transport him down and I'll see him in the front office.

Q All right. Now, where was Patrolman Williams seated?

[355] A He was sitting in the back with the subject.

Q Was he having any conversation with the subject?

A No, I didn't hear anything.

Q Nothing at all?

A Nothing. I didn't hear anything.

Q Were you the only one talking?

A I was talking back and forth to McKenna.

Q Was McKenna talking at all?

A No. I started the conversation. He said: "Yeah, I realize this is a handicap school." That's what he replied after I told him children play in the area.

Q Did McKenna say anything else besides: "I realize it's a handicap school"?

A No. I was doing most of the talking at this time.

Q So you did most of the talking with only a response from McKenna saying: "Yes, this is a handicap school."

A Right.

Q And then this outburst by the defendant?

A Right, that he —

Q Is that a true statement?

A That's a true statement that he said he would stop, turn around, I'll show you where the weapon is.

Q And when you arrived back on the scene, he was informed [356] of his constitutional rights again?

A Absolutely.

Q Was he informed — strike that. Was he asked whether he wishes to waive his right to counsel.

A No, I can't recall that if at all he said that.

MR. CERILLI: I have no further questions.

Redirect Examination by Mr. Stone

Q And it is your testimony that once you returned to the scene, Captain Leyden did advise him of his rights?

A Yes, he did.

Q And after that you did say that Captain Leyden asked him if he understood that?

A Yes, I heard him say that.

Q He said: "I'll show you where the shotgun is."

A Yes.

MR. STONE: I have no further questions.

THE COURT: You may step down.

[357] RICHARD G. MCKENNA SWORN

Direct Examination by Mr. Stone

Q Patrolman McKenna, by whom are you employed?

A By the Providence Police Department.

Q How long have you been so employed?

A Eight years.

Q Were you on duty on the A.M. of January 17, 1975?

A Yes, sir.

Q And did you have an occasion to be in the Chalkstone Avenue area at approximately 4:30 A.M.?

A Yes, sir.

Q What was the purpose of your being in that area?

A I was summoned there by Patrolman Lovell and Sergeant Sears.

Q What purpose?

A To transport a prisoner.

Q And did you respond to that area?

A Yes, sir.

Q And did you transport a prisoner?

A Yes, sir.

Q And you know who that prisoner was?

A Yes, sir.

Q Who was that prisoner?

[358] A Mr. Innis.

Q You see him in the courtroom today?

A Yes, I do.

Q Could you point to him, please?

A That gentlemen sitting there with the blue coat on, denim jacket.

Q Okay.

MR. STONE: May the record indicate the patrolman indicated the defendant Innis?

THE COURT: The record may so reflect.

Q You say you were summonsed? Were you driving the vehicle?

A No. I was the — more or less driving shotgun. Patrolman Williams was the driver of the vehicle.

Q All right. When you got there to the scene, what happened?

A Well, when I arrived on the scene, the Sergeant Sears and Patrolman Lovell had Mr. Innis in custody, and more or less they had him by the arms, holding him by the arms.

Q Okay. And did you in fact transport him — place him in the vehicle?

A Not at that point. We were waiting for Captain Leyden to respond at the scene, and he did so within about a 30 or 40 seconds after I had arrived.

[359] Q Now, you arrived with who, Williams?

A Patrolman Williams.

Q All right. And after Captain Leyden responded to the scene, what happened?

A Well, at this time Captain Leyden approached Mr. Innis and notified him of his constitutional rights.

Q Did you hear what Captain Leyden said?

A Yes, sir.

Q What did he say?

A He stated to Mr. Innis that he had a right to remain silent; that he had a right to talk to an attorney while any questioning took place, and also that he had a right — well, let's see how he worded it. Also, he asked him if he understood his constitutional rights, and at this point Mr. Innis stated that he wanted an attorney. At this point, Captain Leyden didn't say anything further to him. He just told me and Patrolman Williams to place the man in the wagon.

Q Did anyone else ride with you in the wagon?

A Yes. He ordered Patrolman Gleckman to ride with us.

Q Now, who drove the wagon back?

A Patrolman Williams drove and I sat in the front seat and Patrolman Gleckman got in the back seat with the subject.

[360] Q Patrolman Gleckman got in the back seat with the subject?

A Right.

Q And what happened then?

A Well, Gleckman was talking, you know, to me and Williams, and he made the statement that it was more or less a shame that the weapon would be left up in that area with the ammunition. He travels up in that area quite a bit and he felt that some kids might come upon it and, you know, fire the weapon off or maybe get hurt themselves with it.

Q And what then happened?

A At this point, Mr. Innis stated to us that he would show us where the weapon was. His exact words were, if I can remember correctly, were: "I'll show you where the weapon is. Turn around and take me back."

Q And what happened then?

A At this point, I radioed Captain Leyden that we were returning to the scene and that would he be present there when we arrived.

Q And what happened next?

A Well, we arrived back at — I believe, it's Obadiah Brown Road, and Captain Leyden was there, along with many [361] other police vehicles, and patrolmen, and we started lining up the vehicles to search for the weapon.

Q And did you find the weapon?

A Yes, we did.

Q Did you observe Captain Leyden saying anything to Mr. Innis when you came back?

MR. CERILLI: Objection.

A I don't recall at that point. I wasn't with the prisoner right next to him. I believe Patrolman Gleckman had ahold of the prisoner at that point.

MR. STONE: I have no further questions.

Cross-Examination by Mr. Cerilli

Q Officer McKenna, did you hear the defendant asking for a specific attorney when he indicated he wanted an attorney after Captain Leyden had given him his rights?

A No, I did not.

Q All right. Now, did you place the defendant in the vehicle or did someone else place him in the vehicle?

A I believe I assisted in placing him in the vehicle.

Q What type of vehicle was it?

A Well, it's what we call a caged car. It has the screen separating the back seat from the front.

Q It's not a van?

[362] A No, no. No, it's an open vehicle. It's a four-door sedan with the caged back.

Q And you recall the defendant getting in the front seat or the back seat?

A He was placed in the back seat.

Q Do you recall who placed him in the back seat?

A Well, like I said, I believe I assisted him getting in the back seat, along with Patrolman Williams, and Gleckman was standing nearby. I don't know whether he actually assisted in placing him in the vehicle. At this point the subject was handcuffed and we more or less helped him to get in, seeing he didn't have his arms free.

Q And you sat in the front seat, shotgun?

A Yes.

Q Where did Williams sit?

A Williams was the driver.

Q And where did Gleckman sit?

A In the back seat with the subject.

Q All right. Now, how far had you traveled before the defendant indicated he wanted to show you where the weapon was?

A A very short distance. I would say no more than maybe [363] half-a-mile, three-quarters of a mile.

Q Which direction did you head down Chalkstone Avenue?

A Well, the vehicle was facing down Chalkstone Avenue and we proceeded down Chalkstone Avenue, more or less like out of the city, towards Manton Avenue where the junction is, and we took a left-hand turn on Manton Avenue, continuing back into the city.

Q Do you recall the exact words of Gleckman before the defendant indicated that he would show you where the weapon was?

A I don't know the exact words he used. We were only having a more or less like a conversation, and as I stated, he more or less indicated the seriousness of having the weapon, you know, laying free in that area, with the ammunition to it, because of the fact that so many children play in that wooded section.

Q Did you say anything?

A I more or less concurred with him that it was a safety factor and that we should, you know, continue to search for the weapon and try to find it.

Q And did you say anything else?

A No, sir.

Q Did Williams take part in this conversation?

[364] A I don't remember or recall him saying anything specific, no. He may have made a comment more or less along the same lines, but I don't remember.

Q What did Gleckman say to Innis?

MR. STONE: Objection. There hasn't been any testimony he said anything.

THE COURT: It is cross-examination. I will allow the question.

MR. STONE: But there is no foundation and there has been no testimony by any witnesses that anyone said it, and I think it's far beyond the scope of direct examination.

THE COURT: I have ruled. Your exception is noted.

A I don't believe that there was any conversation between Mr. Gleckman and Mr. Innis in respect to the weapon. I don't know if there was anything else said. I don't think there was. I don't recall anything being said.

Q Was there any conversation between Williams and Innis?

MR. STONE: Objection. There's been no testimony on that either.

THE COURT: The question is, was there any conversation between Williams and Innis.

[365] MR. STONE: Withdraw the objection.

THE COURT: You may answer.

A I don't believe there was. I don't believe Williams talked to him at all.

Q Was there any conversation between you and Mr. Innis?

A No, there was not.

Q None at all? Now, when you overheard Captain Leyden giving the defendant his rights, did he give any instructions to you and the other fellow officers before you took him down to the — the defendant, before you took the defendant down the station.

A Well, the only instructions there were, were to transport him to the Central Station and to the business office, which is just routine procedure in any prisoner being taken in.

Q And when the defendant was taken back to the scene where the Captain Leyden was, was he asked whether or not he wished to waive his right to counsel, that he's already indicated he wanted?

A Would you please repeat that question?

Q All right. When the defendant Innis was brought back to the area of Obadiah Brown Road, was he asked whether or not he wishes to waive his right to counsel?

[366] MR. STONE: Objection. It calls for a conclusion. The witness testified he didn't hear what he said when he came back. If he asks if he knows, I will withdraw the objection.

THE COURT: The witness certainly will. If he heard nothing, he will so state. Overruled. It is cross-examination. You may answer.

A When we arrived back at the scene, I believe Patrolman Gleckman got out one side of the vehicle with the prisoner, I got out the other side of the vehicle, Captain Leyden was present there, and I know he was on that side of the vehicle but I did not hear the conversation that took place.

MR. CERILLI: I have no further questions.

Redirect Examination by Mr. Stone

Q Now, Patrolman Gleckman, when Innis was placed in the vehicle, I think you testified you assisted Patrolman Williams, is that correct?

A Right.

Q And I want you to try to recall, you say Gleckman was standing off to the side?

A He was right there at the vehicle. I mean off to the side, maybe a few feet away from the door.

[367] Q All right. Who put Innis into the vehicle?

A I believe it was myself and Williams, or Gleckman. I don't recall exactly but I know I was there and I took the prisoner by the arm.

Q Now, who got in beside him?

MR. CERILLI: Objection, your Honor. We have gone all over this.

THE COURT: Overruled.

Q Now, I want you to stop and think about this.

MR. CERILLI: Objection, your Honor, to that type of comment to this witness, and I wish the Court to instruct —

MR. STONE: This is some ten months ago, your Honor.

THE COURT: Ask your question. Let the witness think and answer. You may answer.

A Would you repeat the question again, please?

THE COURT: Read it back, Mr. Gallucci.

(Read)

This would be the defendant who got in beside him.

A If I remember correctly, the vehicle — Innis was placed in it and the vehicle door was closed, and we were waiting for instructions from Captain Leyden. [368] At that point, Captain Leyden instructed Patrolman Gleckman to accompany

us. There's usually two men assigned to the wagon, but in this particular case he wanted a third man to accompany us, and Gleckman got in the rear seat. In other words, the door was closed. Gleckman opened the door and got in the vehicle with the subject. Myself, I went over to the other side and got in the passenger's side in the front.

Q And who drove the vehicle?

A Williams drove the vehicle.

MR. STONE: I have no further questions.

MR. CERILLI: I have no further questions.

THE COURT: You may step down. Thank you.

[369] WALTER WILLIAMS SWORN

Direct Examination by Mr. Stone

Q Patrolman Williams, are you employed by the Providence Police Department?

A Yes, sir.

Q How long have you been so employed?

A Four years.

Q Four years?

A Almost.

Q And did you have an occasion to be on duty on the A.M. of January 17, 1975?

A Yes, I was.

Q And more specifically, were you in the area of the Chalkstone Avenue at approximately 4:30 A.M.?

A Yes, I was.

Q What was the purpose of your being in that area?

A I was assigned to a wagon to transport a subject that was found in the Chalkstone area.

Q When you say a wagon, could you describe the vehicle you were assigned to?

A It is a regular car with a screen in the back seat.

Q Screen?

[370] A Right.

Q You consider that a wagon?

A Yeah, sometimes I do.

Q Okay. And you say you were assigned to that wagon, to do what?

A To transport a subject from Chalkstone Avenue.

Q Did you transport a subject?

A Yes, I did.

Q Did you or do you know the subject's name?

A Innis was his last name.

Q Do you see that subject in the courtroom today?

A Yes, I do.

Q All right. Could you point to him please?

A (Pointed).

Q What does he have on?

A Got a blue denim jacket on.

MR. STONE: May the record indicate that the witness has identified Innis, the defendant?

THE COURT: The record may so indicate.

Q You say you transported him?

A Right.

Q And what happened when you arrived at the scene, if you can recall?

[371] A Oh, when I arrived at the scene, right following after we arrived there, Patrolman McKenna and I were assigned to the wagon. Captain Leyden pulled up right behind us. He got out of his car, went up to the subject, which is Mr. Innis over here, and he told him he had the right to remain silent; anything he said will and may be used against him in a court of law; that he had the right to an attorney and have him present with him while he was being questioned, and he also stated to him that if he couldn't afford an attorney the Court

would appoint him one. He asked him if he understood his rights, and at this time Mr. Innis said he wanted to see his attorney.

Q And then what happened?

A Then Captain Leyden ordered us to put him back in the wagon and transport him to the station.

Q And did you do so?

A Yes, we did. Patrolman McKenna and Patrolman Gleckman were sitting in the front and I sat in the rear seat with Mr. Innis.

Q Who was driving?

A Patrolman McKenna.

Q And what happened? Which way did you go?

A We went down Chalkstone toward Manton Avenue.

[372] Q How far did you go from the original scene — strike that. Did anything unusual happen then?

A Patrolman Gleckman started talking to McKenna about the kids in the area of the school, the handicapped kids, that they could find the weapon and they could get hurt with it.

Q And they were in the front seat?

A Right.

Q And you were in the back seat?

A Right.

Q With Innis?

A Right.

Q Now, what happened then?

A Well, at that — while they were talking, Mr. Innis says: "Stop the car. Turn around and I'll show you where the gun is."

Q Had you said anything to Mr. Innis?

A I didn't say a word.

Q Had Gleckman said anything to Mr. Innis?

A No.

Q Had McKenna said anything to Mr. Innis?

A No.

Q After Innis said that, what happened?

[373] A We turned around. Patrolman McKenna picked up the radio and called the captain. We returned back to the scene.

Q Now, how far had you gone from the original scene?

A Within a mile.

Q Within a mile? And what happened when you returned to the scene?

A When we got there, there was already several cars there looking in an area for a gun. We got there — when we got there, the captain was pulling up right behind us again.

Q What captain is this?

A This is Captain Leyden.

Q Okay.

A And at this time the captain had told him to come out of the car, and he and Patrolman Gleckman went off one way and I went with another patrolman looking for the gun, scanning the area.

Q Did you observe Captain Leyden saying anything to Innis?

A I heard him say something. I couldn't hear what he was saying. I was going in another direction.

MR. STONE: I have no further questions.

Cross-Examination by Mr. Cerilli

Q You remember the substance of Gleckman's conversation [374] exactly? Do you remember exactly what Gleckman said?

A He said it would be too bad if the little — I believe he said a girl — would pick up the gun, maybe kill herself.

Q Maybe kill herself?

A Yes (Nodded).

Q And did he say anything else?

A No.

Q That's it?

A I don't think so. I don't recall him saying anything else.

Q Did McKenna say anything?

A He said: "Gee, it would be too bad", or something like that.

Q And that's it?

A Yes (Nodded).

Q All right. Did Mr. Innis request the presence of any particular attorney?

A Any particular one?

Q Yeah.

A No.

Q And where did you turn around and come back?

A We were approaching Manton Avenue and Chalkstone.

Q Approaching?

[375] A Yes (Nodded).

Q Before you came to the intersection?

A I believe so, either that or right at the intersection.

Q Why don't you give us the route that the vehicle took from the scene of the arrest?

A Our vehicle?

Q Yes.

A Okay. It would be westbound on Chalkstone Avenue. That would be going into Manton.

Q When you reached the intersection of Manton and Chalkstone, what did you do?

A Well, before we reached it, he, Patrolman Gleckman, was talking about the little kids in the area of the school, and right before we reached the intersection Mr. Innis said: "Turn around and I'll show you where the gun is." And at the time we were approaching the intersection and at that time we turned around.

Q How far in miles, if there are more than one mile, from the arrest scene to the place where you turned around?

A Arrest scene? It's between a half-mile and a mile, I would say.

MR. CERILLI: I have no further questions [376] of this witness.

MR. STONE: Would you like Mr. Aubin now or —

THE COURT: No. There are two matters and we will take one at a time.

MR. CERILLI: If your Honor please, may I have a moment to confer with my client?

THE COURT: Yes, you may.

MR. CERILLI: Your Honor, if the Court please, I have discussed with Mr. Innis the possibility of taking the stand. I have explained to him that for the purposes of this hearing, he could take the stand and in fact it would not go before the jury.

THE COURT: That is correct.

MR. CERILLI: However, at this time, after discussing the pros and cons with Mr. Innis, Mr. Innis wishes not to take the stand.

THE COURT: Very well.

MR. CERILLI: And which is his right under our constitution.

THE COURT: Absolutely.

MR. CERILLI: So, that the defense will not present any witnesses at this particular time.

THE COURT: All right. Does the State rest [377] with regard to this particular voir dire, Mr. Stone?

MR. STONE: Yes, your Honor.

THE COURT: And the defense rests?

MR. CERILLI: Yes, your Honor.

THE COURT: I will hear argument.

(Argument presented by counsel)

THE COURT: It is clear from the evidence that the evidence presented contained some discrepancies as to who sat where in the automobile; those discrepancies are not at all vital or disturbing to the Court. The real issue is, did this defendant have the benefit of his Miranda Warnings at the time he was apprehended, at the time he was placed in the car for transport to the police station, and at the time he returned apparently volunteering to locate the weapon.

The Court is completely satisfied after hearing the police witnesses testify that this defendant was repeatedly and completely advised of his Miranda rights. It is entirely understandable that a police officer not used to testifying, could forget one of the phrases of the warnings when testifying. When questioned, it came back to mind.

I would point out parenthetically that it is quite obvious to the Court that these witnesses who testified this morning were not rehearsed nor did they get together and [378] compare notes before testifying. They have disagreed with each other on unimportant particulars. That evidence impresses me as to its credibility. I must note that.

When the request for counsel was made, first time, second time, possibly third time, because there was the original officers and then Leyden: "I want an attorney", the proper thing happened. The defendant was placed in the car and ordered transported to headquarters.

In the automobile, driving along Chalkstone Avenue, we have three officers who are out at four in the morning, or later, and have been prowling around searching for a weapon which they had reason to believe was there. The weapon was either loaded or with shells. It is in the area of a school where when daylight arrives handicapped and retarded children will be coming to the area. I think it is entirely understandable that they would voice their concern to each other. And I have

to say that I commend the defendant for responding to the danger which, more than likely, he did not know of up until that time. There is no reason for me to believe, and no evidence on which I should conclude, that he was familiar with the area and the type of facilities that were there. So the defendant responded out of a very commendable concern to a situation [379] that he became acquainted with. I commend him for it. He responded and then said: "Turn around, take me back and I will show you where the weapon is."

It was a waiver, clearly, and on the basis of the evidence that I have heard, and intelligent waiver, of his right to remain silent. And for whatever reason, whatever motivates people, as long as it is not the result of threat or coercion, it is a waiver for all purposes, and the weapon was found.

I find that the seizure of this weapon by the authorities, on the basis of the evidence that I have heard and that I believe, and the inferences that I draw from it, in no way violated the defendant's constitutional rights.

The defendant's oral motion to suppress this weapon that has been marked as State's 41, is denied. The defendant's exception is noted.

MR. STONE: Is the Court ready for Mr. Aubin?

THE COURT: Yes. I would also state for the record, the Court distinguishes the Massey case in that the situation there was entirely different. The counsel had requested by name, had responded by telephone, had spoken both to the defendant and to the police, and I [380] found in that case that a waiver had to be in the presence of counsel because that counsel had all but entered an appearance in the case. The case of People against Arthur, I also distinguish, because in that case counsel had appeared; not just a call for counsel. So that, I distinguish both of those cases.

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[385] Q Describe what it looked like?

A It was a sawed-off shotgun.

Q Okay. Sawed-off shotgun?

A Yes, it was.

Q Is there a distinction in your mind between a rifle and a shotgun?

A Yes, it is.

Q What did you observe?

A Well, he told me that — well, I heard the noise first, metal noise, and he said: "I've got a shotgun." I turned and I seen the shotgun.

Q And what happened then?

A He told me not to pull any funny business, or try to be a hero, or anything, and I just told him that, you know, I wouldn't pull anything funny. I'd just go along with him.

Q Showing you State's Exhibit 41 for Identification, does this weapon look similar in nature to the one that you observed on the night of January 16, 1975, in your Standard Cab?

MR. CERILLI: Objection to the form of the question, your Honor.

THE COURT: Overruled. You may answer.

A The only thing I seen was the barrel. It was — he was

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* * * * *

[389] in and then I proceeded. Then it was at some shopping center — I think it was Benny's Auto Store — in Cumberland that he said to turn around and head back towards — he wanted to go back towards Providence.

Q When he got in the front seat, could you still see the shotgun?

A Yes, I did. That's the first thing that came into the car.

Q The first thing that came into the car?

A Hmmm, hmmm.

Q And it was a sawed-off shotgun?

A Yes, it was.

Q What happened then after you turned around in Benny's in Cumberland?

A We went through Manville and onto 146, and he told me to take left, go to Providence, and up to the Admiral Street exit. That's where he told me to get off. And from then on, he gave me directions where he wanted to go.

Q And then what happened?

A We just drove. I don't know just where it was but through the streets, and I don't know just where it was, somewhere in North Providence, but I do remember going through the Rhode Island Junior College Campus.

Q Is is Rhode Island Junior College or Rhode Island College?

[390] A Rhode Island College. RIC. And it was shortly thereafter that he told me to drive into a lot and where he got out.

Q Did you ever see a golf course anywhere?

MR. CERILLI: Objection.

THE COURT: Leading. Sustained.

Q What all did you observe in the Rhode Island College area?

A We just went through the parking lot. I had been there last year one time. We just drove through the streets there. I didn't observe anything else.

Q Are you familiar with that general area?

A No, I'm not.

Q And then what happened?

A Well, I dropped him off. He told me to drive into this parking lot, and he said stop the car, and he said: "I'm getting out now." He said: "Don't stop until you get to Woonsocket."

Q Now, how much time transpired between the time you originally picked this individual up on Diamond Hill Road, Child's World until you stopped in the parking lot you just described?

A I believe I dropped him off it was quarter to twelve.

Q So approximately an hour and forty-five minutes?

A Yes.

Q And he was driving around all this time with the shotgun [391] on you?

A Yes.

Q And what happened after he got out of the car?

A I just drove away.

Q And what did you do after you drove away?

A The first phone booth I seen I called the Providence Police.

Q Where did you get the money from to call the Providence Police?

A I had some change in my pocket, a few dimes.

Q And after you called the Providence Police, what happened next?

A A cruiser responded and I told them what had happened, and they asked me to follow them to the Providence Police Station, which I did.

Q And when you got to the Providence Police Station, what happened?

A I talked to some more officers about what had happened and then they asked me to give my statement to the detectives, and they brought me to the detective's room.

Q Did you observe anything?

MR. CERILLI: Objection, your Honor.

THE COURT: Overruled. You may answer.

A On the way to —

Q Just simply yes or no.

[392] A Yes, I did.

Q Did you observe anything?

A Yes, I did.

Q What did you observe?

A A bulletin board that had several pictures on it, and I identified the person.

Q Now, had the police directed you to that bulletin board at that time?

A No, they didn't. We were just walking by there. It was in some hallway.

Q And you looked at the bulletin board on your own?

A Yes, I just happened to glance by.

Q What did you observe when you saw that bulletin board?

A I seen the defendant.

Q The same individual that you described earlier?

A Yes, I did.

Q And what did you say about that photograph?

A I just said that that's the guy that just held me up. I was surprised that the picture was there.

Q And after that, what did you do?

A I gave the statement to the detectives, and then they produced a half dozen pictures, and they asked me if it was one of them, and I again picked out the same individual.

[393] Q It was the same individual you'd seen on the bulletin board?

A Yes, it was.

Q It was the same individual that had robbed you?

A Yes, it was.

Q Then what happened either later on that night or the next morning?

A The next morning I received a call from the Providence Police saying that they had captured someone, and they wanted me to come down sometime in the morning, if I could, to view the lineup.

Q How many people were in the lineup?

MR. CERILLI: Your Honor, if the Court please, before any evidence of a lineup, I'd like to have an opportunity for a voir dire as to how the lineup was conducted and so forth.

MR. STONE: Your Honor, I assume that he would have that opportunity since we don't have the jury here.

MR. CERILLI: I'd have to speak with the police officers who set the lineup; I'd have to make sure he waived his right to counsel at the lineup, and so forth. I believe the Court understands my position.

THE COURT: I understand your position but I am going to handle things somewhat out of the normal order.

* * * * *

[409] MR. CERILLI: Objection, your Honor.

THE COURT: Objection overruled. You may answer.

A Could you repeat the question?

Q From your experience with weapons, did you have any idea what this weapon could be used for?

A Only through what I've seen on television.

Q Well —

MR. CERILLI: Objection, your Honor. Motion to strike.

MR. STONE: I won't go any further.

THE COURT: The question was premised on your experience with guns, so the objection is sustained. Proceed to your next line of questioning.

Q Now, showing you State's Exhibit 41 for Identification, can you identify this particular weapon?

A That is the weapon I saw on Monday the 13th.

Q How can you so identify that weapon?

A By the marks on the barreling.

Q By the marks on the barreling?

A Yes, on the outside.

Q Is this the one you saw on the morning of the 13th?

A Yes.

Q Who showed you that weapon?

A Thomas Innis.

* * * * *

[441] To admit this evidence would be to supply by inference what happened to Mulvaney because we know what happened to Aubin. I submit that the type of case that would permit the introduction of this kind of evidence is when you have two complete s[c]enarios, and we do not have them in this case.

I am convinced after much thought that it would be prejudicial and reversible error for the Court to admit this kind of evidence in this proceeding. The State's motion to present the testimony of Mr. Aubin is denied. The defendant's objection to the motion is sustained. Whoever has the exception, may have the exception.

MR. STONE: The State would take an exception.

THE COURT: Very well. Are you ready to call your next witness?

MR. STONE: Yes, your Honor.

THE COURT: All right, bring the jury out, please.

MR. CERILLI: Your Honor, may I approach the bench with Mr. Stone?

THE COURT: Yes.

(Bench conference)

(Jury enters)

* * * * *

TESTIMONY OF ROBERT M. LOVELL

Direct Examination by Mr. Stone.

[445] Q After Captain Leyden arrived and advised him of his rights, what happened then?

A Captain talked to him for a minute, then a wagon arrived and he placed him in a wagon.

Q And do you know if anything happened subsequent to him being placed in the wagon, of your own personal knowledge?

A Well, all I know is that the wagon left, then the men in the wagon, I don't know who it was, came back on the air, stated the subject wanted to show us where a gun was and they then returned back to where we were.

Q Subsequent to the wagon returning, were you directed to any particular location?

A Yes, sir, Obadiah Brown Road.

Q Who were you directed there by?

A Thomas Innis.

Q The same Thomas Innis that you identified in this courtroom?

A Yes, sir.

Q Under his direction, what did you find?

A We found a .16 gauge bolt action sawed-off shotgun, and eight shells.

Q Would you be able to identify it if you saw it again?

A Yes, sir.

* * * * *

TESTIMONY OF JOSEPH GLECKMAN.

Cross-Examination by Mr. Cerilli.

[455] A Well, we started to transport this party down. We made it about a mile down the road. We went down Chalkstone Avenue and proceeded towards Manton Avenue, down the road, and at this particular time I was talking to Patrolman McKenna and I was stating to him that this is such a bad location for a weapon to be left, with shells, as Obadiah Brown Road is the location of a school for the retarded, or you know, children who have mishaps, and that if one of the child should come across this weapon they could hurt themselves.

Q Did anything happen after you said that to Officer McKenna?

A At this particular time, the subject in the back seat stated: "Stop the car, turn around, I'll show you where the weapon is."

Q Do you see the subject in the courtroom?

A Yes, I do.

Q Could you point to him, please?

A (Pointed).

Q What does he have on?

A Dungaree jacket with a print shirt, tan with dark brown.

Q That's the subject that was in the wagon?

A The back seat.

[456] Q After he said: "Turn around, I'll show you where the weapon is", what happened then?

A Well, Patrolman McKenna got on the portable, and the mike, and he said — told the captain that the subject had stated he would show us where the weapon is, we went back to where he said it would be, on Obadiah Brown Road, and at this time we was met by Captain Leyden again who administered his rights to him again at this time.

Q What did he say at that time?

A He said: "You have the right to remain silent; anything you say can and will be used against you in a court of law; you have the right to an attorney being present while you're questioned, and if you can't afford one, the State will appoint you one; and do you understand this?" And he said yes, and proceeded to show us.

Q And, one question, while you were — when you first arrived at the scene and when you got back, were there any other police officers in the area?

A Numerous police officers conducting a search.

Q What were they doing?

A Conducting a search for a shotgun.

Q After you returned, did Mr. Innis help in the search?

[457] A Yes, he did.

Q Were you present?

A Yes, I was.

Q And what did Mr. Innis do?

A Well, he took — well, he was handcuffed at this time and I was holding onto him, and he was showing us, "Well, it might be over here, I'm not sure." Then he took us to another location. It was under this rock, and about five, six feet away, a little embankment, there was the shells.

Q And did you recover a shotgun?

A Yes, we did.

Q Can you describe what that shotgun looked like, if you recall?

A It was a sawed-off type shotgun, approximately .16 gauge.

Q Showing you State's Exhibit 42-41 full, do you recognize this shotgun?

A Yes, this is the one.

Q And how do you so recognize that shotgun?

A Well, it's got Patrolman Lovell's signature on it.

Q Did you see him put his signature on it that night?

A Yes, I did.

* * * * *

Redirect Examination by Mr. Stone.

[461] A Yes.

Q When you returned in the wagon?

A Yes, I was.

Q And you say you also heard Captain Leyden ask him if he understood his rights?

A Yes, I did.

Q What did the defendant respond?

A This is the second time he said he would show us.

MR. STONE: I have no further questions.

MR. CERILLI: I have no further questions.

THE COURT: You may step down, sir. Thank you.

MR. STONE: Your Honor, at this time the State would call Corporal Green, Rhode Island State Police, to the stand.

* * * * *

[537] to examine the evidence with regard to the major charges involved. Proceed. Your exception is noted.

MR. CERILLI: Thank you, your Honor. The only other objections would be to the requests that had been made in the defendant's request to charge but not charged.

THE COURT: Very well.

MR. STONE: In response to the objection, the State would state for the record — particularly note to the murder charge — that not only is it inconsistent with second degree, manslaughter, but just looking at the location of the shot, the testimony of Doctor Faye Spruill that this had to be first degree

murder, the location of the body, no clothes, all this inconsistent with anything other than premeditation, assuming that they didn't even believe a felony occurred. The charges aren't given in a vacuum but they relate to the facts as brought out by the trial.

THE COURT: Well, this was the Court's feeling after carefully examining the evidence. The defendant's exception is noted. We will be in recess until we have some word from the jury.

(Recess)

AFTERNOON SESSION

(Defendant enters)

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[539] THE COURT: Very well.

(Jury polled)

(Jury excused)

THE COURT: Mr. Cerilli, will there be a motion for a new trial?

MR. CERILLI: Yes, Your Honor.

THE COURT: All right. I will set it down for hearing November 25th, before me, in this court. We will be in recess.

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[546] Normally, the Court would continue this case for sentencing and order the preparation of a presentence report, however, since this Court has no discretion in the sentence to

be imposed on the charge of murder in the first degree, and consistent with the holding of the Supreme Court in the case of State against Bradshaw, 101 R.I. 233, I will now impose sentence on the defendant in these cases.

(Arguments presented by counsel)

THE COURT: Mr. Innis, the law gives you the right to say anything you wish to the Court at this point before sentence is imposed. You may say anything at all, and nothing you say would in any way work to your disadvantage. Is there anything you wish to say to the Court?

DEFENDANT: Nothing at all, your Honor.

THE COURT: Nothing at all?

DEFENDANT: No.

THE COURT: Very well. I have before me all presentence information that had previously been prepared by the Department of Probation and Parole, the Presentence Division, with regard to this defendant. It is material that dates from the middle 1960s until 1974. I have reviewed that in deliberating on what sentences would be imposed on those charges wherein the Court has discretion. The defendant [547] has a long history of anti-social behavior. The defendant also took great pains in one sense to cover up his involvement in this particular crime by stripping the body and so forth, in my opinion, but then did some very unintelligent things, presenting himself at various homes in the area. One wonders. In any event, I do not consider this a crime of impulse. I am persuaded by the evidence that I have heard and reviewed that the defendant's intention to kill the cab driver was more than momentary.

I commend the defendant, and I will give him credit, for bringing the Providence Police to where he had secreted the weapon. It was in an area, according to the evidence, where there was a school for retarded children. Had it been found, a

terrible tragedy could have occurred, and I will give you credit for that, for that humanity that you showed immediately on hearing this, bringing the police to where the weapon was. But nothing that I have heard and read of your background and record, nothing in the presentence report, indicates to me anything but that long sentences should be imposed. You did not have the best of beginnings, Mr. Innis, but you have been given many breaks along the way, and it is time for society to say enough; no more. Society is entitled to some protection. Therefore, on the charge of kidnapping, the Court sentences you to twenty years [548] at the Adult Correctional Institutions. On the charge of robbery, in which you have been found guilty, the Court sentences you to thirty years at the Adult Correctional Institutions. On the charge of murder in the first degree, I sentence you to life imprisonment at the Adult Correctional Institutions.

I must advise you now, Mr. Innis, that you have the right to appeal your guilty findings or the sentences of this Court to the Supreme Court of the State of Rhode Island. If you are unable to afford private counsel to handle this, you will have the services of the public defender's office to prosecute that appeal in your behalf, or you may proceed in forma pauperis, if you so desire, for any reason the public defender's office cannot represent you.

MR. STONE: Excuse me, your Honor, are those sentences concurrent with the sentences presently being served?

THE COURT: Yes. Each of those sentences are to be served concurrent with each other and concurrent with any sentences presently being served. That is all.

[The Opinion of the Supreme Court of Rhode Island may be found in the Appendix to the Petition for Writ of Certiorari at pages 1a-29a.]
